



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT - 5 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John Delionado
Martin Leonard Steinberg
Hunton & Williams
1111 Brickell Avenue, Suite 2500
Miami, FL 33131

RE: MUR 5903
H. Michael Dye

Dear Messrs. Delionado and Steinberg:

On September 11, 2007, the Federal Election Commission found that there is reason to believe your client, H. Michael Dye, knowingly and willfully violated 2 U.S.C. §§ 441b and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath

[Redacted signature area]

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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_____ If you will continue to represent Mr. Dye, please have him so advise the Commission by completing the enclosed designation of counsel form.

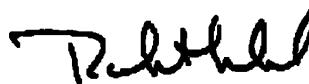
If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Adam Schwartz, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Robert D. Lenhard
Chairman

Enclosures

Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**
3
4

5 **Respondent:** H. Michael Dye
6
7

MUR: 5903

8 **I. BACKGROUND**

9 This matter originated with a complaint filed by Maria M. Garcia alleging that PBS&J
10 Corporation ("PBS&J"), violated the Federal Election Campaign Act of 1971, as amended (the
11 "Act") by reimbursing the campaign contributions of its employees and their family members.
12 The Complainant alleges that PBS&J, through a succession of former senior executives officers
13 and accounting personnel, including the complainant, "knowingly" made prohibited corporate
14 contributions to various political committees from the 1990s through the 2002 election by
15 reimbursing personal contributions and the contributions of others in violation of 2 U.S.C.
16 §§ 441b(a) and 441f.

17 PBS&J is a Florida-based government contractor that provides a range of services related
18 to transportation, environmental, construction management, and civil engineering. In late March
19 2005, a PBS&J auditor reported to the Audit Committee that the company was the victim of
20 embezzlement. Shortly thereafter, William S. DeLoach, the Chief Financial Officer, identified
21 himself as one of the participants in the embezzlement scheme. Mr. DeLoach explained to the
22 company how he, along with Maria Garcia, PBS&J's Business Information Systems Manager,
23 and Rosario Licata, PBS&J's Accounts Payable Manager, conspired to embezzle more than \$35
24 million by issuing company checks to themselves, diverting money from the company healthcare
25 benefit fund into secret bank accounts, charging personal expenses on the company credit card,
26 and concealing the theft of these funds by altering and fabricating the company's books. In
27 connection with this embezzlement, Mr. DeLoach, Ms. Garcia and Ms. Licata pled guilty to a

1 felony count of conspiracy to commit mail fraud on September 28, 2006. Mr. DeLoach also pled
2 guilty to a felony violation of 2 U.S.C. § 441f, admitting that he knowingly and willfully made
3 \$11,000 in illegal contributions to the Martincz for Senate Committee through six straw donors
4 on October 4 and 5, 2004.

5 The complaint alleges that, in addition to the 2004 contributions reimbursed by Mr.
6 DeLoach, PBS&J, through various corporate officers and employees, engaged in a "pattern of
7 decade(s) long illegal campaign violations, including reimbursement of respondent's employees,
8 friends and spouses for political contributions. The complainant alleges that senior managers
9 instructed their subordinates to use corporate funds to reimburse employee campaign
10 contributions by preparing false documents with fictitious descriptions for the disbursements.
11 The complaint states that in March 2002, PBS&J reimbursed a \$2,000 contribution made by
12 James Breland, a PBS&J executive, to Sen. Max Cleland's reelection campaign.

13 Additional criminal filings against former PBS&J executives indicate the mechanics and
14 extent of the potential violations. Specifically, on March 8, 2007, criminal charges alleging,
15 among other things, conspiracy to commit mail fraud and making false statements stemming
16 from a corporate reimbursement scheme that began in 1990, were filed against Richard Wickett,
17 a former Chief Financial Officer and Chairman of the Board of Directors, and H. Michael Dye, a
18 former PBS&J Chief Executive Officer. These documents allege that in 1990, Mr. Wickett and
19 Mr. Dye instructed their respective secretaries to open bank accounts entitled "PBS&J Out of
20 State PAC," but not to include the accounts in PBS&J's financial records. Mr. Wickett and Mr.
21 Dye then allegedly instructed their secretaries to have any reference to PBS&J removed from the
22 checks issued from these accounts. Thereafter, Mr. Wickett and Mr. Dye would approve
23 corporate disbursements to these accounts, and then use the funds to make contributions to

1 principal campaign committees. In other instances, Mr. Wickett and Mr. Dye would make
2 personal campaign contributions and then authorize PBS&J to make reimbursements through the
3 "Out of State PAC" bank accounts.

4 By 2000, the scope of the corporate scheme grew to encompass additional PBS&J
5 employees. According to the indictment, in 2000 and 2001, Mr. Wickett and Mr. Dye arranged
6 for certain PBS&J officers and directors to receive bonuses, but were informed that \$10,000 of
7 each bonus had to go to PBS&J's political action committees. In 2002, Mr. Dye approached
8 PBS&J Regional Sales Managers and District Directors and asked them to make campaign
9 contributions to specific candidates in amounts ranging from \$500 to \$2,000. Mr. Dye then
10 caused PBS&J to reimburse these contributions with notations such as "mileage reimbursement"
11 and "business development expense." Although the overall scope of the violation is not clear at
12 this time, the transactions detailed in the indictment involve over \$20,000 in corporate and
13 reimbursed contributions.

14 All told, currently available information suggests that between 1990 and 2004, PBS&J
15 used corporate funds to reimburse over \$30,000 in campaign contributions. This amount does
16 not include any contributions made by PBS&J officers or directors as a result of the 2000 and
17 2001 bonuses.

18 II. DISCUSSION

19 Corporations are prohibited from using corporate resources to engage in campaign
20 fundraising activities. *See* 2 U.S.C. § 441b(a). A corporation can only act through its directors,
21 officers, and agents, and may be held liable for the acts of an employee within the scope of the
22 employment and that benefit the corporate employer. *See United States v. Wallach*, 935 F.2d
23 445, 462 (2d Cir. 1991); 1 William Meade Fletcher et al., *Fletcher Cyclopedia of the Law of*

1 *Private Corporations* § 30 (Supp. 2004). *See, e.g., Liquid Air Corp. v. Rogers*, 834 F.2d 1297,
2 1306 (7th Cir. 1987). In addition, section 441b(a) prohibits any officer or director of any
3 corporation from consenting to any expenditure or contribution by the corporation. The Act also
4 provides that no person shall make a contribution in the name of another person or knowingly
5 permit their name to be used to effect such a contribution. 2 U.S.C. § 441f.

6 Available information supports the conclusion that Mr. Dye consented to the use of
7 corporate resources to make campaign contributions. By instructing subordinates to create a
8 separate bank account and then funneling corporate funds into the account, Mr. Dye caused
9 PBS&J to make thousands of dollars in campaign contributions over a period of up to thirteen
10 years. In addition, as the scheme continued, the apparent scope broadened to include additional
11 officers and members of the board of directors. For example, the scheme broadened in 2000 and
12 2001 to encompass selected officers and board members who were told to reserve a part of their
13 bonus for political activity.

14 The criminal proceedings against PBS&J's former officers and employees suggest that
15 Mr. Dye knowingly and willfully violated the Act. The knowing and willful standard requires
16 knowledge that one is violating the law. *See Federal Election Commission v. John A. Damesi*
17 *for Congress Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986); *see also* Federal Prosecution of
18 Election Offenses (6th Ed., 1995). An inference of a knowing and willful act may be drawn
19 "from the defendant's elaborate scheme for disguising" his or her actions. *United States v.*
20 *Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990). Not only did PBS&J corporate executives and
21 employees establish separate bank accounts to make political contributions, but they disguised
22 reimbursements to employees by categorizing them as "mileage reimbursements" and "business
23 development expenses."

III. CONCLUSION

For the foregoing reasons, the Commission finds reason to believe H. Michael

Dye knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.